



Frequently Asked Questions about Shoreline guidelines rule-making

From Ecology's Shorelands and Environmental Assistance Program

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Q: What are shoreline guidelines and who do they apply to?

A: A state law called the Shoreline Management Act requires every local government to adopt a set of land-use plans and development regulations called a "shoreline master program" for their shorelines. These guidelines provide direction to local government on the processes and standards for reviewing their shoreline master programs and ensuring that they are updated to remain consistent with the Shoreline Management Act.

Q: What shorelines are covered by local government master programs?

A: At a minimum, the Shoreline Management Act applies to those shorelines along salt water, along streams greater than 20 cfs, and along lakes larger than 20 acres, plus associated wetlands and flood plains.

Q: In December 2002, you announced that you had an agreement on new guidelines that business and environmentalists agreed with, but now you're proposing new rules again! What's Ecology up to now?

A: In December we announced that we had reached an agreement that would settle the pending lawsuit. That settlement included a broad consensus on language that should be proposed for new shoreline rules. Ecology is now going through formal rule-making to propose those rules for adoption.

Q: So, is your request for public comment merely a formality? Is it really possible for the public to influence the content of these new regulations at this point?

A: Rule-making is never considered pro-forma or a done deal. Moreover, the legislative directions toward "regulatory reform" during the 1990s expressly support the process of developing draft rule proposals in consultation with those who would be affected by them.

It is important to remember that we have been through 2 previous rounds of rule-making, which generated thousands of public comments, then we went through nearly a year of legal negotiations that further refined the language, and then the language went through additional scrutiny by the legislature during the 2003 session. No other rule-making by Ecology has been through such an exhaustive process, so it is unlikely that we will see significant changes as a result of the public comment period. However, we will carefully consider each comment received and will almost certainly make some changes in response to such comments.

Q: What were the concerns that led business groups to challenge the shoreline guidelines, and are they now satisfied?

A: Businesses and some local governments believed Ecology exceeded the authority granted under the Shoreline Management Act in the rules adopted in 2000. In contrast, these

same business and local governments have confirmed that the guidelines now being proposed are within the scope of the act. In particular, these new proposed guidelines contain additional clarity for local governments and businesses and are in many ways simpler (by eliminating the 2-path approach); and private property protections are assured.

Q: What are the main differences between the 2000 guidelines and the negotiated guidelines?

A: One of the most noticeable differences is that we scrapped the two-path approach that gave local governments an option in how they developed new shoreline master programs.

We also added “governing principles” for interpreting how the regulations are to be applied. The principles include:

- Resource protection is required for new shoreline uses and development -- establishing a principle of "no net loss of ecological functions.
- Resource restoration needs of the shoreline are addressed, while not expecting new development to carry the burden of compensating for the problems created by past practices.
- Clear direction to review and update local laws in a manner consistent with constitutional protections on property ownership and use.

Q: Will the new shoreline guidelines allow any wiggle room or flexibility at the local level?

A: The Shoreline Management Act (SMA) has always been a state/local partnership. The state sets the minimum standards through the shoreline guidelines, but each local government has broad latitude to develop a shoreline program that fits that community's unique environmental conditions, culture, economy and regulatory structure. Additionally, a requirement for local, broadly representative public involvement has always been a hallmark of the SMA.

Q: Will money be available for local governments to implement the new regulations?

A: The 2003 legislature provided \$2 million for the 2003-05 budget period so local governments can begin revising their local shoreline master plans. The legislature also revised the Shoreline Management Act to allow local governments to update their SMPs on a staggered schedule through 2014, rather than all of them at once.

There is an expectation that future legislatures will provide additional money each biennium so all cities and counties can update their shoreline master plans.

Q: What if a local government doesn't want to update its shoreline master plan?

A: Ecology is required to prepare and adopt master program updates for any local (city or county) jurisdiction that fails to update prior to the deadline established in the law.

Q: What if a local government wants to update its shoreline master plan sooner than the timeline calls for? Can it get its money sooner?

A: The legislation encourages local governments to update early, and they are eligible for funding within the amount appropriated by the legislature.

Q: Do the new guidelines require restoration?

A: The proposed guidelines require local governments to plan for restoration in their shoreline master programs. Restoration is not a requirement for private development, but each local government must

consider restoration needs in its jurisdiction, identify resources that may be available to conduct restoration, prioritize restoration actions, and coordinate development activities to make sure they don't interfere with planned restoration efforts and vice versa.

Q: Did you retain the Path A/Path B options?

A: The previous Path A/Path B options have been entirely eliminated. The proposed guidelines reflect the same subject matter as addressed by these prior drafts, but in a manner that has addressed the concerns of the variety of local government, business, and environmental critics of the former guidelines.

Q: Has NMFS given its approval? Will these guidelines satisfy ESA requirements?

A: No. The federal fish agencies have not been directly involved in this new approach. If and when the Department of Ecology adopts the new shoreline guidelines, the federal government will be given the opportunity to make its own assessment of whether these new guidelines satisfy ESA requirements. We believe the proposed guidelines still reflect sound science and are implemented in part to protect and restore shoreline resources, which include fish habitat.

Q: Do the new regulations require a 200-foot buffer along shorelines?

A: We must be careful to not confuse SMA jurisdiction (which is 200 feet or more from a water body) with buffers (where intensive development is restricted). Buffers are an important tool to ensure that new development does not result in a net loss of shoreline ecological functions - the functions that are necessary for shorelines to remain viable for fish and wildlife and not create erosion and flooding hazards for humans.

Under the proposed guidelines (just as with previous versions of the guidelines), local governments are directed to develop appropriate buffer requirements, based on local circumstances - which means they can vary for each stretch of shoreline and from city to city, and county to county. There are no one-size-fits-all standards proposed here.

Q: Does this rule apply to farms/agriculture?

A: The new guidelines will result in updated local shoreline master programs that will apply to new cultivated areas and agricultural development activities. But a new law passed in the 2002 legislative session requires that when local shoreline programs are updated, the new standards, setbacks and buffers do not apply retroactively to existing agricultural development. Local governments will need to be aware of this requirement when updating their master programs. Agricultural interests represented in the negotiations have agreed with this approach.

Q: Will waterfront property owners still be able to protect their property with a bulkhead under this rule?

A: There is no difference between the old guidelines and the newly proposed ones. Property owners must still clearly demonstrate that a need exists -- then use an approach that has the least effect on natural shoreline processes.

Q: Will homeowners face additional restrictions on building docks?

A: That depends on the local circumstances. If new docks can be shown to not harm natural shoreline ecological processes, then they can be allowed.

Q: What about restrictions on repairing their house, barn, fence, bulkhead, dock or other structure?

A: The shoreline guidelines allow local governments to allow existing structures that are damaged to be repaired (subject to any building requirements imposed separately by your city or county government).

Q: Who decides if the local master program is adequate?

A: Under the Shoreline Management Act, all local master programs must be submitted to the Department of Ecology for review and approval before they take effect. If a local government is seeking protection from ESA liability for listed fish, then it must consult with the federal government for an appropriate response to ESA requirements

Q: Is the state prepared to compensate property owners for lands they cannot develop due to the new guidelines?

A: The state Attorney General's office has extensively reviewed the proposed guidelines to ensure that the guidelines will not take private property. There will be continued emphasis on the development process for the local master programs to ensure that local regulations do not cause a taking of property that requires just compensation.

But just as importantly: better management of shorelines will actually enhance properties and their value because future development will be sited in a way that is less prone to causing downstream flooding and erosion. In situations where there is an extraordinary burden placed on individual landowners, there are incentive programs already in place that can allow a property owner to qualify for property tax breaks for protected shoreline areas.

Q: Are these guidelines longer or shorter than the previous version?

A: They are about half the length of the ones we adopted in 2000 - primarily due to deleting the Path B option.

Q: Have you done (or will you do) an economic impact analysis on the negotiated guidelines?

A: A draft small-business economic impact statement and draft cost-benefit analysis have been prepared and will be issued at the same time the rule is published. People may submit comments on these documents during the rule-making comment period. These documents will be used in making the final decision on the language of the rule.

Q: Why are new shoreline management guidelines needed?

A: The guidelines from the 1970s were not meeting the protection standards set out in the Shoreline Management Act, which was adopted by voters through the initiative process in 1972. In addition, the legislature wanted Ecology to update the guidelines to improve coordination between the Shoreline Management Act and the Growth Management Act, which was passed in 1990.

The law requires us to "protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life..." Yet, there's clear evidence that we're not succeeding. All over Washington, beaches and stream banks have been eroded, habitat has been destroyed, flood damage has increased, and species are being lost. Much of this damage is linked to poor development practices in shoreline areas, and it's time to improve our shoreline management guidelines to comply with the law.

Q: What are the benefits and costs associated with shoreline protection?

- Since 1994, Washington has had five major flood disasters involving 38 of our 39 counties. Many acres of farmland washed away; hundreds of homes were destroyed; damage to public and private property totaled approximately \$750 million dollars, and five people died.
- Through FEMA, we have spent millions of tax dollars replacing homes and businesses lost in floods - when the homes and businesses probably shouldn't have been there to start with.
- We're currently investing millions of dollars in habitat restoration. But our existing, out-of-date shoreline regulations would allow the destruction of the good habitat we still have - and habitat-restoration projects could get washed away or filled with silt if we don't improve our shoreline practices upstream.

Note: Not all floods, erosion and slides are caused by development activities, but poor shoreline management (including building in flood plains, destabilizing shorelines, and destroying habitat) does contribute to the frequency and severity. By paving over shoreline areas, we increase the flooding problem - but then we leave that water with no where to go. If we're going to keep adding population, we also need to add space around rivers and streams to handle the additional runoff and accommodate natural river meandering.

Q: What are the “protection standards” required by the SMA?

A: The voter-approved Shoreline Management Act of 1971 sets a very broad, general policy to “protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life...”

More specifically, the SMA requires that “permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” This broad authority is a key reason that updating the guidelines is one of the top priorities of the Governor's Salmon Strategy.

Q: What are the natural shoreline functions that need to be protected?

A: Allow storm runoff to spread out and minimize damage from flooding; absorb energy from waves; provide shade to keep rivers and creeks cool; protect shoreline vegetation that is important for habitat for fish and other wildlife, etc.

Q: Where does the Shoreline Management Act say the guidelines need to protect fish and their habitat?

A: A key policy of the Shoreline Management Act is to “protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life...” Thus, it is well within the scope of the Shoreline Management Act to address fish protection and recovery.

Q: Does the Shoreline Management Act and shoreline jurisdiction include coastal areas and Puget Sound?

A: Yes.

Q: Why can't people do what they want on their own property?

A: For the most part they can. However, government has the authority and obligation to protect the greater public good, and that includes reasonable regulations on the use and development of property.

In addition, the voter-approved Shoreline Management Act does limit what a property owner may do to protect the rights of other landowners and the general citizenry to use and enjoy the natural shorelines of the state. State and federal courts have upheld the right of citizens to protect themselves from inappropriate, hazardous, and unhealthy development.

Without adequate protection of existing shoreline sensitive areas, everyone sooner or later ends up suffering the consequences - paying for flood damage and loss of property, for expensive restoration projects, or other consequences.

Information on this topic can be accessed through Ecology's Website at <http://www.ecy.wa.gov/programs/sea/sma/guidelines>.

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